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TAX COMMISSIONER

# Property Tax Newsletter

April 2003

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## 2003 Legislation

The Property Tax Division is monitoring legislation pertinent to property taxation. A number of bills have passed but have not yet been signed by the Governor. The following property tax bills are still awaiting action by the legislature.

<u>Bill No.</u>	<u>Subject Matter</u>
HB 1024	optional consolidation of county mill levies
1058	re-levy of property taxes omitted by mistake
1107	Inclusion of Renaissance zone exemptions in mill rate calculations
1207	port authorities
1312	additional aid for Montpelier school district
1492	bidder at county land sale must be qualified (no delinquent taxes)
HCR 3078	urges property tax fairness and relief for property inundated by Devils Lake.
SB 2006	homestead credit appropriation
2052	special assessments for flood control on state-owned land
2182	school district equalization factor
2261	long term leases & leasebacks, exemptions

To view a bill or check its status, go to [www.discovernd.com](http://www.discovernd.com), click on 58th Legislative Assembly, Legislation: 2003, Bill Status Inquiry. Following the 2003 Legislative Session, the Property Tax Division will provide assessment officials with a summary of property tax changes and effective dates of the legislation. ☛

## Sales Verification and Analysis

Assessment officials need to verify sales information to ensure accuracy of information and examine the motivation behind the transaction. It is very important to know the buyer's viewpoint of what is purchased at the time of the sale. Therefore, assessment officials should confirm the facts with the principals to the transaction, if possible, or with the realtors or lenders involved.

As part of verifying sales information, assessment officials need to determine whether the transaction meets the qualifications of the definition of market value:

- Most probable price
- Property was offered for sale to the general public for a reasonable length of time
- Financing was typical for the type of property
- Willing buyer and seller who are knowledgeable about potential uses of the property

Assessors also need to examine the following:

- Property rights conveyed
- Market conditions at the time of sale
- Motivation of the buyer and seller
- Financing terms (e.g., interest rate, points paid by seller)
- What is included in the sale price (e.g., assumption of special assessments, personal property)

Whenever the purchase price includes consideration for anything other than real property, assessors must adjust the sale price to account for the real property only. For example, when a sale price includes a *significant* amount of personal property, the assessor should subtract the value of the personal property from the total sale price. Likewise, when the seller pays the points for financing purposes, the assessor should *subtract* the value of those points from the sale price of the property.

When completing Bx Schedules for the sales ratio study, assessment officials need to list the sale price reflecting real property only. Direct any questions related to the sales ratio study to Judy Brosz. In the Bismarck-Mandan area, you may contact her by dialing 328-3142 or toll free at 1-800-638-2901, option 5. Her e-mail address is [jbrosz@state.nd.us](mailto:jbrosz@state.nd.us). 📧

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## Mobile Home Survey Results

**I**n the November 2002 Property Tax Newsletter, Assessment officials were asked to respond to questions regarding the procedure followed in assessing structures located on lots in mobile home parks.

While not all county directors responded to the survey, the results varied. Some real property structures were properly assessed to owners of the land on which they are located and others were improperly assessed with the mobile homes.

North Dakota Century Code (N.D.C.C.) ch. 57-55 defines “mobile home” and provides for its taxation; however, chapter 57-55 is silent regarding valuation of real property improvements with mobile homes. On the other hand, N.D.C.C. § 57-02-34 specifically states, “. . . The assessor shall determine both the true and full value as defined by law and the assessed value of each tract or lot of real property listed for taxation, and shall enter those values in separate columns, and the true and full value and assessed value of all improvements and structures taxable thereon in separate columns, opposite such description of property, and in another column shall show the total assessed value of the property by adding the totals of the two previous assessed value columns.”

There was minimal interest in changing the law. Therefore, the Tax Commissioner urges all assessment officials to properly assess real property structures located on lots within mobile home parks to the owner of the land as required by N.D.C.C. § 57-02-34. 📧

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## Possessory Interest Assessments & Tax Statements

**W**henver real property owned by the government or a railroad is used by someone who is subject to taxation, assessment officials determine a possessory interest assessment against the individual or entity using the property. (N.D.C.C. § 57-02-26(1)). Examples of possessory interest include the following situations:

- Teacher or superintendent living in house owned by the school district
- Business located on railroad operating property
- Privately owned hangar at the airport
- Privately run pro shop operating at a golf course

There is a proper way to list a possessory interest on the assessment list. To illustrate, it's best to use an example. As of February 1, a teacher lives in a residence owned by the school district. The parent parcel remains as is; that is School District (owner); L. 1, B. 1, Original Townsite (legal description); Exempt – N.D.C.C. § 57-02-08(3). The auditor creates a new parcel of real property which lists as follows: John Q. Public (taxpayer); "Possessory interest in L. 1, B. 1, Original Townsite" (legal description); true and full value of the land and buildings (value).

The tax list should correspond with the assessment list. North Dakota Century Code § 57-20-07.1 requires the county treasurer to send the tax statement to the owner, which, in the case of a possessory interest assessment, is the individual or entity having the possessory interest. In the example above, the tax statement for the possessory interest assessment is addressed to John Q. Public. The school is not responsible for paying the tax, the teacher is.

Property belonging to the United States, the state, or a political subdivision is exempt from ad valorem taxation. Individuals and entities having a taxable interest in property owned by any of these entities or by a railroad are subject to the possessory interest assessment and should receive the tax statement and pay the tax. ●

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## Service Business or Farming?

Each assessment year, assessment officials are confronted with different situations. In order for rural buildings to qualify for the farm building exemption according to N.D.C.C. § 57-02-08(15), they must meet two qualifications: location and use. The buildings must be located on agricultural land (land used for growing crops or grazing farm animals) and used as part of a farming operation.

The following situation was presented to the Property Tax Division for its administrative position. An individual has a building located on agricultural land in which he keeps brood mares and collects and ships urine to pharmaceutical companies for processing purposes. Is the barn a farm building for purposes of property tax exemption?

It is the position of the Office of State Tax Department that buildings used primarily for collecting and selling urine are not used as part of a farm operation and therefore are not eligible for exemption as farm buildings. The reasoning follows.

In order for horses to be considered farm animals, they must be used as part of a farm operation. This office does not consider recreational horses and horses used for purposes of collecting urine for sale as farm animals. Honey extracted from bees and milk extracted from cows are considered agricultural commodities as referred to in N.D.C.C. § 57-02-08(15)(a)(2). Horse urine is not an agricultural commodity. Collection and sale of horse urine is a service business, similar to veterinarian services. Buildings used as such are used in a commercial business, not as part of a farm operation. Therefore the buildings are taxable. It is the responsibility of the taxpayer to prove to the assessor and governing boards that a building qualifies for exemption. ●

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## Exemption of Property in Renaissance Zones

North Dakota Century Code § 40-63-05 provides for partial or complete property tax exemption of property located in city renaissance zone areas.

Assessment officials have questioned whether the property tax exemption applies only to the city portion of the tax or to the entire amount of consolidated tax.

The exemption of property located in a renaissance zone is handled in the same way as the exemption of new and expanding businesses. The exemptions apply to the property, not the tax rate. If a property is granted 50 percent exemption, the exemption applies to the property value. The consolidated mill rate applies to the 50 percent of the value that remains taxable.

Assessment officials also questioned whether the value of the property could change during the 5-year exemption period or if it needed to remain constant during that time period. For example, a property was granted the exemption at 50 percent. For year 1, the value was \$100,000 so \$50,000 would be exempt. If the market increases and the assessor increases the property value to \$120,000 in year 2, the exemption increases to \$60,000; however, the valuation subject to tax also increases. 🍁

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## Preparations for Equalization Meetings

**I**n April, township and city boards of equalization will meet to review 2003 assessments. These boards are responsible for examining the assessment list to determine whether all taxable property is listed and values of similar properties are equalized, and for acting on appeals by property owners. Assessors can assist their boards by preparing a report that summarizes assessment changes, total valuations, sales ratio statistics, exemptions, credits and other pertinent assessment information.

The best opportunity to make changes in assessments and correct inequities is at the township and city boards of equalization, because the township and city boards of equalization can easily make changes to individual assessments. Typically, older properties are overvalued compared to what the market indicates they sell for. Township and city boards of equalization have authority to add to the assessment list property that was omitted by the assessor. The township board of equalization may increase property values only after notifying the property owner of its intent to increase any amount. The board of equalization must recess, and the township clerk must send written notification to the property owner of the board's intent and the date on which the board will reconvene to finalize the action. The board must meet again to allow the property owner to appeal the assessment and to finalize the assessments. The city board of equalization has the same responsibilities as the township board of equalization. However, the city board needs to notify the property owner of its intent to increase any value by more than 25 percent. The city board of equalization must recess, the city auditor must send written notification to the property owner, and the board must reconvene to consider any appeals and finalize the current year assessments.

The next level in the equalization process is the county board of equalization which meets within the first 10 days of June. This board is responsible for reviewing the assessments as finalized by the township and city boards of equalization. Prior to the meeting date, the county board should request the tax director to do spot checks on valuations in the county. The county board of equalization, after notifying the local board of equalization of its intent, may reduce individual assessments provided the owner has appealed the assessments. The county board of equalization may increase individual assessments only after notifying the local board of equalization and the property owner by mail of its intent, and holding another meeting to consider any appeals. The board may direct the county auditor to correct a classification of an improperly classified property. The county board of equalization does NOT have authority to add any omitted property to the assessment list. The county auditor must add the omitted property according to N.D.C.C. §§ 57-14-01 through 57-14-07. The county board of equalization does have authority to increase or decrease an entire class of property within an assessment district or the entire county by a percentage without first notifying all of the property owners. Property owners may appeal their individual assessments directly to the county board of equalization without first appealing to their local boards of equalization.

The final step in the equalization process is the state board of equalization. The state board of equalization meets the second Tuesday in August to equalize individual values and the values between counties. A property owner may appeal the decision of the county board of equalization to the state board of equalization, but the state board has no statutory authority to reduce any assessment unless the property owner has first appealed the assessment to the local and county boards of equalization.

County auditors, tax directors and assessors can advance the equalization process by informing their respective governing boards of their responsibilities and the procedures for the equalization meetings. 🍁

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## Attorney General's Opinion

The ND Attorney General issued a letter opinion dated March 13, 2003, regarding exemption of property used for charitable or other public purposes.

This opinion states that if a property is used exclusively for charitable or other public purposes, it is exempt from ad valorem taxation under the self-executing provision of article X, section 5 of the North Dakota Constitution, regardless of the form of ownership of the project. Article X, section 5 addresses the issue of taxable status of property used for charitable or other public purpose.

[P]roperty used exclusively for schools, religious, cemetery, charitable or other public purposes shall be exempt from taxation.

North Dakota Century Code § 57-02-08 provides for exemption of certain property. Subsection 8 states, in pertinent part, as follows:

. . .

8. All building belonging to institutions of public charity . . . together with the land actually occupied by such institutions not leased or otherwise used with a view to profit, . . .

(Emphasis supplied.)

The Attorney General opined that Article X, section 5 is self-executing so that property *used* exclusively for charitable or other public purposes is exempt; the exemption under N.D.C.C. § 57-02-08(8) for buildings belonging to institutions of public charity *supplements* rather than restricts the constitutional exemption. This means that ownership is not a requirement for property tax exemption under the constitutional provision; however, the property must be used exclusively for charitable or other public purposes.

Whether the property is used exclusively for charitable or other public purposes is a question of fact assessment officials must determine whether or not property qualifies for exemption should be determined based on the criteria stated in Attorney General's Opinion 2003-L-16. 🌀

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## NDAAO to Sponsor Course

The North Dakota Association of Assessing Officers (NDAAO) is making arrangements to hold the International Association of Assessing Officers Course 300 – Introduction to Mass Appraisal at the Doublewood Inn, Bismarck, October 13-17, 2003. Course information will be available early this summer. 🌀

### Need Assistance?

Please direct property tax questions or concerns to:

Office of State Tax Commissioner

Property Tax Division

Phone: (701)328-3127

Toll free within ND: 1-800-638-2901, option 5

Relay North Dakota 1-800-366-6888

(for the speech and hearing impaired)

Fax: (701)328-3700

E-mail: [mdickerson@state.nd.us](mailto:mdickerson@state.nd.us)

Website: [www.ndtaxdepartment.com](http://www.ndtaxdepartment.com)